FILED
FEB 23
CHARLES ELM

IN THE

Supreme Court of the United States

October Term, 1928.

No. 667.

WILLIAM ROSCHEN,

Appellant,

against

HAMILTON WARD, Attorney General of the State of New York, JOAB H. BANTON, District Attorney of New York County, New York, and WILLISTON W. BISSELL, HARLOW M. FULLER, THOMAS McBURNIE, WILLIAM L. COOK and FREDERIC A. WOLL, constituting The Board of Optometry Examiners of the State of New York,

Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

STATEMENT OF JURISDICTION.

SELIGSBERG & LEWIS,
Attorneys for Appellant,
Office & P. O. Address,
43 Cedar Street,
Borough of Manhattan,
New York City, N. Y.

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Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Statement of Jurisdiction.

Appellant submits, in compliance with Rule 12, Revised Rules of the Supreme Court of the United States, adopted June 5, 1928, the following statement of the basis of this Court's jurisdiction to review, on appeal, the judgment of the District Court.

A.

STATUTORY PROVISION SUSTAINING JURISDICTION.

This appeal is prosecuted directly from a decree of the District Court on a motion for preliminary injunction heard and determined by three judges, of whom at least one was a Cir-

cuit Judge, and is prosecuted directly to this Court under Section 266 of the Judicial Code, which provides for an appeal directly to this Court from an order granting or denying, after notice of hearing, an interlocutory injunction restraining the enforcement of a State Statute on the ground of the unconstitutionality of such Statute, and which also provides for a similar direct appeal to this Court from a final decree denying a permanent injunction in such case.

B.

The decree (R., 111)* denying the motion for preliminary injunction and dismissing the plaintiff's complaint (R., 3-11) was entered on the 4th day of January, 1929. The application for the appeal (R., 114) was presented and the appeal allowed on the 4th day of January, 1929 (R., 114).

C.

The nature of the case is a suit for injunction against Hamilton Ward, Attorney General of the State of New York, Joab H. Banton, District Attorney of New York County, New York, and Williston W. Bissell, Harlow M. Fuller, Thomas McBurnie, William L. Cook and Frederic A. Woll, constituting The Board of Optometry Examiners of the State of New York, enjoining them from enforcing or attempting to enforce the provisions of Chapter 379 of the Laws of New York of 1928 against this plaintiff (R., 3-11). The rulings of the Court below were

(a) A denial of the application for interlocutory injunction; and

(b) A dismissal of the bill seeking permanent injunction (R., 111).

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* All references to the record are to the pages of the typewritten record as prepared by the Clerk of the District Court. The record has not yet been printed.

D.

CASES SUSTAINING JURISDICTION.

Interstate Busses Corporation v. *Blodgett*, 276 U. S. 245;

Palmetto Fire Insurance Co. v. *Connecticut*, 272 U. S. 295;

Herkness v. *Irion*, decided at the present term of this Court, viz., on November 19, 1928, but not yet officially reported. This case is reported unofficially in 49 Sup. Ct. Rep. at page 40.

Dated, February 8, 1929.

Respectfully submitted,

SELIGSBERG & LEWIS,
Attorneys for Plaintiff-Appellant,
By W. N. SELIGSBERG,
Of Counsel.

Due and timely service of the foregoing statement of jurisdiction is acknowledged this 13th day of February, 1929.

HAMILTON WARD,
Attorney for defendants, Bissell, Fuller, McBurnie, Cook and Woll.

HAMILTON WARD,
Attorney General,
in Person.

JOAB H. BANTON,
District Attorney,
Defendant in Person.

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B.

The decree (R., 110)* denying the motion for preliminary injunction and dismissing the plaintiff's complaint (R., 3-11) was entered on the 4th day of January, 1929. The application for the appeal (R., 113) was presented and the appeal allowed on the 4th day of January, 1929 (R., 113).

C.

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(a) A denial of the application for interlocutory injunction (R., 110).

(b) A dismissal of the bill seeking permanent injunction (R., 110).

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By W. N. SELIGSBERG,
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Attorney for defendants Bissell, Fuller, McBurnie, Cook and Woll.

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Attorney General,
in Person.

JOAB H. BANTON,
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Defendant in Person.